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CITY OF OAKLAND, et al.
7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10

11 DEMETRIUS L. HARVEY,

12 Plaintiff,

13 v.

14 CITY OF OAKLAND, a municipal
Corporation; OAKLAND POLICE
15 DEPARTMENT; WAYNE TUCKER, Chief,
Oakland Police Department; DEPUTY
16 CHIEF HOWARD JORDAN,
OAKLAND POLICE LIEUTENANT GIER,
17 OAKLAND POLICE LIEUTENANT
WHITMAN, OAKLAND POLICE OFFICER
18 DOMINIQUE AROTZARENA,
OAKLAND POLICE OFFICER J. MORRIS,
19 OAKLAND POLICE OFFICER MUSCHI,
OAKLAND POLICE OFFICER GUTIERREZ,
20 In their official and individual capacities,
Does 1 through 50, inclusive.

21 Defendants.
22
23
24
25
26

CASE NO. C07-01681 MJJ

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO DISMISS FIRST AMENDED
COMPLAINT AND MOTION FOR MORE
DEFINITE STATEMENT

[FRCP 12b, 12e]

Date: September 18, 2007
Time: 9:30 a.m.
Dept: Courtroom 11, 19th floor

The Honorable Martin J. Jenkins

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I. INTRODUCTION

In response to the City defendants' motion to dismiss the initial complaint, plaintiff eventually filed a first amended complaint. The City defendants bring this second motion to dismiss, because the defects contained in the initial complaint have not been cured.

Plaintiff brings this suit arising from his detention at the Fresno County and two other county jails, in connection with an arrest warrant from Alameda County. Plaintiff claims that he was improperly strip-searched at three different County jails, and claims that his detention and arrest by Oakland police were based on incorrect information that he was a suspect in a robbery and hate crime. On December 27, 2005, Plaintiff was detained by the Fresno Police Department and taken to the Fresno County jail pursuant to an outstanding arrest warrant. After being transported to Oakland, plaintiff was jailed in the North County jail and Santa Rita jail (Dublin), and the District Attorney filed charges against plaintiff on January 3, 2006. Plaintiff obtained bail and was released from jail on January 8, 2006. The charges later were dismissed by the District Attorney for lack of sufficient evidence.

Plaintiff has brought a "kitchen sink" complaint, seeking recovery under 42 U.S.C. Section 1983 and several supplemental state law claims. Plaintiff broadly names the City of Oakland and eight individual police officers ranking up to the Chief of Police, both in their individual and professional capacities, and seeks punitive damages against each of them.

The City defendants, and each of them, bring this motion to dismiss because several causes of action are inadequately pled or barred as a matter of law. The Monell claim against the City fails because plaintiff points to nothing beyond this single incident regarding his arrest and detention and, further, as to strip searches conducted at County jails the City is neither a decisionmaker nor a policymaker as to County entities. Further, the state law claims are insufficient or barred as a matter of California law. The several

1 claims against the individual defendants are largely unsupported by any facts to explain
2 why they even appear in the complaint.

3 The City defendants also bring a motion for a more definite statement under Rule
4 12(e), because it is impossible to ascertain which causes of action apply to which
5 defendants from the complaint in its present form.

6 **II. MOTION TO DISMISS [RULE 12B(6)]**

7 **A. Plaintiff's First Cause of Action Under 42 U.S.C. Section 1983, A Monell** 8 **Claim, Fails As A Matter of Law.**

9 **1. Requirements Of A Monell Claim Are Not Met.**

10 In order to impose liability on a local governmental entity for failing to preserve
11 constitutional rights, a Section 1983 plaintiff must prove "(1) that he possessed a
12 constitutional right of which he was deprived; (2) that the municipality had a policy (3) that
13 this policy amount[ed] to deliberate indifference to the plaintiff's constitutional right; and
14 (4) that the policy [was] the moving force behind the constitutional violation." Oviatt v.
15 Pierce, 954 F.2d 1470, 1474 (9th Cir. 1992).
16

17 A plaintiff must plead an "official policy" sufficient to impose municipal liability
18 under Section 1983. Plaintiff must identify the "edicts or acts" of an official policy maker
19 charged with authority over the specific area in which the policy is applicable. Monell v.
20 New York Department of Social Services, 436 U.S. 658, 694 (1978); Ulrich v. City and
21 County of San Francisco, 308 F.3d 968, 985 (9th Cir. 2002). Liability cannot be imposed
22 on the basis of respondent superior. Rather, the deprivation of constitutional rights must
23 have occurred pursuant to municipal "custom" or "policy" to lead to municipal liability. 436
24 U.S. at 690. Alternatively, a plaintiff may demonstrate that a custom, practice or usage
25
26

1 exists that is so persistent and widespread as to be deemed an official policy, even when
2 those customs or practices deviate from the written or otherwise officially articulated
3 policies of the public entity. Id. at 690-91, citing Adickes v. S.H. Kress & Co., 398 U.S.
4 144, 167-68 (1970); Trevino v. Gates, 99 F.3d 911, 918 (9th Cir. 1996). A municipality
5 may be liable in the absence of an official policy only if a plaintiff proves “the existence of
6 a custom or informal policy with evidence of repeated constitutional violations for which
7 the errant municipal violators were not discharged or reprimanded.” Navarro v. Block, 72
8 F.3d 712, 714 (9th Cir. 1985).

9
10 Since Monell, the United States Supreme Court further has established that there
11 can be no liability “unless deliberate action attributable to the municipality is itself the
12 ‘moving force’ behind the plaintiff’s deprivation of federal rights.” Bryan County
13 Commissioners v. Brown, 520 U.S. 397 (1997) (emphasis in original). The burden of
14 proving “deliberate” conduct as the “moving force” is a high barrier. Plaintiff must
15 demonstrate “that the municipal action was taken with the requisite degree of culpability
16 and must demonstrate a direct causal link between the municipal action and the
17 deprivation of federal rights.” Id. at 403. The acts of a municipal employee “will not alone
18 permit an inference of municipal culpability and causation; the plaintiff will simply have
19 shown that the employee acted culpably.” Id. at 404 (emphasis in original). To
20 successfully sue the municipality—another and different level of liability—plaintiff must
21 show that the municipality itself took an affirmative act with “deliberate indifference as to
22 its known or obvious consequences,” and that the act caused the employee to deprive
23 plaintiff of his federal rights. Id. at 405.

1 This “stringent standard of fault” requires proof that the “plainly obvious
 2 consequence” of a decision by a municipal policymaker was the particular injury suffered
 3 by plaintiff. Id. at 406-07. A showing of simple negligence will not suffice. Id. at 405].
 4 “[A]t the very least there must be an affirmative link between the policy and particular
 5 constitutional violation alleged.” City of Oklahoma City v. Tuttle, 471 U.S. 808, 823
 6 (1978).
 7

8 Here, plaintiff’s complaint does not make out a cognizable Monell claim. In his
 9 “General Allegations,” plaintiff makes only the sweeping conclusory statement that
 10 unnamed “supervisory and policy-making officers have taken no effective action to ensure
 11 that arrest warrants are executed properly, and that safeguards are put into place to avoid
 12 the arrest and detention of someone who is not the person police are looking for.” First
 13 Amended Complaint, para. 50. In the Monell claim itself (i.e., the First Cause of Action),
 14 plaintiff’s allegations are similarly vague, stating that “defendants” deprived plaintiff of “his
 15 right to be free of unreasonable searches and seizures” under the Fourth and Fourteenth
 16 Amendments. Plaintiff identifies no decision-maker, no policy, and no causation or
 17 deliberate indifference that foreseeably led to the instant arrest and detention in his
 18 criminal case. The First Cause of Action should be dismissed.
 19
 20

21 **2. Strip Searches Conducted By Other Public Entities (Various**
 22 **Counties) Cannot Be The Basis of A Monell Claim Against the**
 23 **City of Oakland.**

24 Plaintiff seemingly has alleged a distinct Section 1983 violation, as part of his First
 25 Cause of Action, for visual body cavity searches. First Amended Complaint, paras. 37,
 26 48. This claim apparently relates to plaintiff’s factual allegation that “In all three jails,
 plaintiff was subjected to degrading and humiliating visual body cavity strip searches.”

1 Id., para. 36. It is clear on the face of the first amended complaint that each of these
 2 three jails – the Fresno County Jail, the North County jail, and the Santa Rita jail (Dublin,
 3 California) – is a county jail. Id., paras. 31, 35-38. Plaintiff alleges no control by the City
 4 of Oakland as to searches conducted within those county jails where he was detained.
 5 Plaintiff makes no allegation that jail or county employees acted pursuant to any policy or
 6 practice of the City of Oakland. Nor can he as a matter of law. Those jails are County
 7 jails under the control of separate public entities and their employees.¹ The City of
 8 Oakland cannot be held liable for events that occur within a prison – whether it be
 9 County, State or Federal – that is outside of its jurisdiction.

10 Plaintiff thus has offered no allegations to support a claim against the City of
 11 Oakland for strip searches allegedly performed at a County jail while in custody there.
 12 Conclusory allegations are insufficient to withstand a motion to dismiss. Sprewell v.
 13 Golden State Warriors, 266 F.3d 979, 988 (9th Cir. 2001). In the absence of sufficient
 14 allegations showing a viable claim against the City of Oakland, the City's motion to
 15 dismiss should be granted. See, e.g., Balistreri v. Pacifica Police Dept., 901 F.2d 696,
 16 699 (9th Cir. 1990).

17 **B. Plaintiff Improperly Relies on A Single Incident (His Arrest Pursuant to**
 18 **a Warrant) To Make A Monell Claim Under 42 U.S. Section 1983.**

19 An isolated incident is insufficient to establish a claim of municipal liability. Under
 20 Section 1983, to impose liability based on an isolated incident, plaintiff is required to
 21 show the existence of a municipal policy attributable to a municipal policymaker, and that
 22 such policy caused the alleged deprivation of constitutional rights. Evidence of “random
 23 acts or isolated events” is insufficient.” Navarro v. Block, 72 F.3d 712, 714 (9th Cir. 1985).

24 _____
 25 ¹ Plaintiff does not name Fresno County, North County or Alameda County as
 26 defendants in this complaint, the entities that allegedly strip-searched him while he was in
 their custody. Defendants have no information whether Plaintiff has filed any claim or
 lawsuit against any County separately.

1 A “single incident” claim faces an imposing standard of proof:

2 Proof of a single incident of unconstitutional activity is not
 3 sufficient to impose liability under Monell, unless proof of the
 4 incident includes proof that it was caused by an existing,
 5 unconstitutional municipal policy, which policy can be
 6 attributed to a municipal policy maker. Otherwise the
 7 existence of the unconstitutional policy must be separately
 8 proved. But where the policy itself is not unconstitutional,
 9 considerably more proof than the single incident will be
 10 necessary in every case to establish both the requisite fault
 11 on the part of the municipality, and the causal connection
 12 between the “policy” and the constitutional deprivation.

13 City of Oklahoma City, 471 U.S. at 824.

14 Here, plaintiff’s case is based on a single incident. Plaintiff has pleaded no “official
 15 policy” that condones the purported deprivations of plaintiff’s civil rights as to his
 16 particular criminal case. Neither can he provide any evidence that the City’s policies
 17 caused his alleged injury. This absence of proof is fatal to plaintiff’s claims against the
 18 City, because “at the very least there must be an affirmative link between the policy and
 19 particular constitutional violation alleged.” City of Oklahoma City v. Tuttle, 471 U.S. 808,
 20 823 (1978).

21 **C. Claims Based on Detention or Jailing Under A Facially Valid Arrest
 22 Warrant Have Been Rejected by Both Federal and California Courts (All
 23 Causes of Action)²**

24 By the Section 1983 federal claim and several state law claims against numerous
 25 individual defendants, plaintiff apparently means to sue any officer who acted pursuant to the
 26 facially valid arrest warrant against him. (The only officer alleged to have knowledge of the
 lack of probable cause alleged by plaintiff is Officer Arotzarena; no other officer is accused of
 any culpable conduct). Plaintiff’s attempt to bring claims for his detention and jailing pursuant
 to a facially valid arrest warrant is the very kind of claim that has been rejected by both federal

² The transport, detention, or jailing of Harvey under a facially valid warrant does not
 rise to a Fourth Amendment or state law tort, as discussed below. The submission of the
 warrant by Officer Arotzarena to Judge Tabor [First Amended Complaint, para. 40-43], is
 a separate matter alleged by Harvey against that particular defendant.

1 and California courts.

2 The seminal case regarding detention pursuant to a facially valid warrant is Baker
3 v. McCollan 443 U.S. 137 (1979). In Baker, a warrant was issued in the name of Linnie
4 McCollan based on the acts of Leonard McCollan, who was using Linnie's driver's license
5 with a substituted photograph. Linnie was arrested for running a red light and then held
6 for three days because of the warrant. The Supreme Court held that the arrest and
7 detention did not constitute a violation of plaintiff's Fourth Amendment rights under 42
8 U.S.C. § 1983. "Whatever claims this situation might give rise to under state tort law, we
9 think it gives rise to no claim under the United States Constitution. Respondent was
10 indeed deprived of his liberty for a period of days, but it was pursuant to a warrant
11 conforming, for purposes of our decision, to the requirements of the Fourth Amendment."
12 Baker, 443 U.S. at 144.

13 A person's protestations of innocence did not change its Fourth Amendment
14 analysis. "The Constitution does not guarantee that only the guilty will be arrested. If it
15 did, § 1983 would provide a cause of action for every defendant acquitted—indeed, for
16 every suspect released. . . . Due process does not require that every conceivable step be
17 taken, at whatever cost, to eliminate the possibility of convicting an innocent person." Id.
18 at 145. "Given the requirements that arrests be made only on probable cause and that
19 one detained be accorded a speedy trial, we do not think a sheriff executing an arrest
20 warrant is required by the Constitution to investigate independently every claim of
21 innocence, whether the claim is based on mistaken identity or a defense such as lack of
22 requisite intent. Nor is the official charged with maintaining custody of the accused
23 named in the warrant required by the Constitution to perform an error-free investigation of
24 such a claim." Id.

25 Further, as to the state law claims, when a warrant appears valid and adequately
26 describes the detained person, the officer has the lawful authority to arrest that person as

1 a matter of law. Lopez v. City of Oxnard, 207 Cal.App.3d 1, 7-9 (1989) (citing Whirl v.
2 Kern, 407 F.2d 781, 790, 791-792, for the proposition that jail personnel and police
3 officers on the street are entitled to rely on process and orders apparently valid on their
4 face). In Lopez, the court sustained the city, the officers, and the jail personnel's demurrer
5 without leave to amend because "neither the police officers nor the jailer breached any
6 duty in refusing to consider the dispositions he showed to them" Id. at 5. With respect to
7 the officers, the court reasoned that the officers are afforded very broad protection
8 against claims of false imprisonment and negligence because the officer needs "to act
9 swiftly and to make on-the-spot evaluation...." Id. at 7. "It is not the function of an
10 arresting officer to investigate the procedure by which the warrant was issued, nor is it his
11 duty to consider the propriety of its issuance provided the warrant is regular on its face."
12 Id. at 8.

13 Given the facts pleaded in the first amended complaint, neither the City nor the
14 officers who transported or jailed plaintiff -- pursuant to a facially valid warrant -- can be
15 subjected to a Fourth Amendment claim or state law claims for such conduct.

16 Moreover, qualified immunity protects the individual officers from suit for detaining
17 Plaintiff pursuant to a facially valid warrant. "[O]fficers are entitled to qualified immunity
18 even if they acted unconstitutionally, as long as a reasonable officer could have believed
19 the conduct lawful." Alexander v. County of Los Angeles, 64 F.3d 1315, 1322 (9th Cir.
20 1995). The first inquiry in the qualified immunity defense is whether the facts alleged
21 indicate that the officer's conduct violated a constitutional right. Saucier v. Katz, 533 U.S.
22 194, 201 (2001). If no right would have been violated on the facts alleged, there is no
23 need for further inquiry into immunity. Id. If a constitutional violation can be established,
24 courts next inquire "whether the right was clearly established in the specific context of the
25 case, rather than as a broad general proposition." Id. The dispositive inquiry in
26 determining whether a right is clearly established is "whether it would be clear to a

reasonable officer that his conduct was unlawful in the situation he confronted.” Id.

Here, when plaintiff was transported by police officers in connection with a facially valid warrant, a reasonable officer would have believed his conduct lawful, and thus entitled to qualified immunity. Specifically, Officers Muschi and Gutierrez, having allegedly transported plaintiff pursuant to an arrest warrant at paragraph 32 of the complaint, are entitled to qualified immunity and dismissal from this lawsuit.

D. Private Actions for Damages Are Not Permitted Under the California Constitution, And Thus The Fifth and Sixth Causes of Action Should Be Dismissed.

In his first amended complaint, plaintiff continues to bring direct causes of action under the California Constitution although such claims are barred as a matter of California law. As his fifth cause of action, plaintiff alleges a violation under Article 1, Section 13 of the California Constitution. As his sixth cause of action, plaintiff alleges a violation of Article 1, Section 7 of the California Constitution.

California courts expressly have rejected damages actions under either of these sections of the California constitution. In Katzberg v. Regents of the University of California, 29 Cal.4th 300 (2002), the California Supreme Court held that a plaintiff cannot bring a damages action under Article I, Section 7 of the California Constitution. In a lengthy decision, the Katzberg court held that the availability of alternative remedies under statute or common law militated against the judicial creation of a tort cause of action under Article I, section 7. Id. at 326-27. See also City of Simi Valley v. Superior Court, 111 Cal. App. 4th 1077, 1085 (2003) (applying Katzberg to bar damages claim under Article I, Section 7). Damages claims under Article I, Section 13 are similarly barred. Rendon v. City of Fresno, 2005 WL 3144144 (E.D. Cal. 2005) (applying Katzberg to bar a claim under Article I, Section 13). The recent case of Weimer v. County of Kern, 2006 WL 3834237, *6-8 (E.D. Cal. 2006) provides a lengthy discussion and case citations, showing again that plaintiff’s damages claims under the California Constitution

1 do not hold water.

2 **E. Plaintiff's State Law Causes Of Action For False Arrest And**
 3 **Imprisonment, Negligence, and Negligent Infliction of Emotional**
 4 **Distress Fail Against the City.**

5 Under California law, the Tort Claims Act was designed to make all governmental
 6 liability dependent on statute. The City of Oakland can only be held liable for damages on the
 7 basis of a specific enactment giving rise to a mandatory duty. Brenneman v. State of
 8 California, 208 Cal. App. 3d 812, 816-17 (1989). Under California Government Code Section
 9 815, "Except as otherwise provided by statute, a public entity is not liable ..." This provision
 10 abolished common law liabilities and requires express citation to statutory liability. See
 11 Haggis v. City of Los Angeles, 22 Cal. 4th 983 (2000); Brenneman, 208 Cal. App. 3d at 816-17
 12 (plaintiff must specifically allege the enactment that gives rise to a statutory duty).

13 Plaintiff fails to mention any statute giving rise to a mandatory duty on the part of the
 14 City of Oakland, throughout Counts Two through Four.³ The motion to dismiss should be
 15 granted as to the City on this basis alone.

16 **F. Plaintiff Makes No Fact Allegations To Support The Claims Broadly**
 17 **Made Against Several Individual Defendants.**

18 As discussed above, plaintiff names numerous individual police officers but includes no
 19 factual allegations tying them to any culpable conduct in the complaint. Those named officers
 20 are: Chief Wayne Tucker, Deputy Chief Howard Jordan, Lieutenant Gier, Lieutenant
 21 Whitman, and Officer J. Morris. At paragraphs 19 through 24, plaintiff states only that these
 22 defendants "personally directed and [took] part in the unlawful practices and policies alleged
 23 in this complaint." He seeks punitive damages as to each individual defendant in his prayer
 24 for relief. Yet plaintiff provides no factual basis whatsoever for suing these officers ranging
 25 from the rank of officer to Chief of Police and, on that ground alone, the complaint as against

26 ³ These claims for False Arrest and Imprisonment (Count Two), Negligence (Count Three),
 and Negligent Infliction of Emotional Distress (Count Four).

1 these individuals should be dismissed.

2 **III. MOTION FOR A MORE DEFINITE STATEMENT [F.R.C.P. 12(E)]**

3 Under Federal Rule of Civil Procedure 12(e), “if a pleading ... is so vague and
4 ambiguous that a party cannot reasonably be required to frame a responsive pleading,
5 the party may move for a more definite statement [.]” See generally Wright & Miller, 5C
6 Federal Practice and Procedure 3rd, Sections 1364-75, 1379 (2004).

7 Despite the benefit of defendants’ first motion to dismiss and motion for a more definite
8 statement, plaintiff continues to bring all claims against “All Defendants” for unspecified acts.
9 The only individual officers identified with any conduct in the complaint are Officer Arotzarena
10 (who allegedly wrongfully detained plaintiff and obtained a warrant from a judge without
11 factual basis, at paras. 33-34, 40-40-43), and Officers Muschi and Gutierrez (who transported
12 plaintiff from Fresno to Oakland pursuant to a facially valid warrant, at para. 32). No other
13 defendant is identified with any culpable or specific conduct relating to plaintiff’s six causes of
14 action.

15 Pursuant to Rule 12(e), defendants move for a more definite statement as to the
16 general allegations and several causes of action brought in the First Amended Complaint– a
17 broadside against the City of Oakland, Police Department and eight individual defendants.
18 The complaint provides broad statements that “defendants, and each of them” detained and
19 arrested plaintiff (not factually possible); and, in sum, is too vague and ambiguous as to the
20 allegations against any single defendant, for these defendants to meaningfully respond.

21 While plaintiff sues the City of Oakland and eight police officers, ranging from a patrol
22 officer to the Chief of Police, none of the causes of action are made out factually against the
23 City or against any identifiable defendant. Because different immunities, and legal standards,
24 apply to the City as a public entity versus the individually named officers, the defendants are
25 entitled to a more definite statement as to who is being sued in each cause of action. See,
26 e.g., Jercich v. County of Merced, 2006 WL 3747184, *7 (E.D. Cal. 2006) (granting Rule 12(e)

1 motion); Avalos v. Baca, 2006 WL 802330 (C.D. Cal. 2006) (same); Commodity Futures
 2 Trading Com'n. v. Beasley, 2005 WL 22172003, *2 (N.D. Cal. 2005).

3 Equally problematic, the most that plaintiff offers as to several defendants is that
 4 he/she "has personally directed and taken part in unlawful practices and policies alleged in
 5 this complaint." Amended Complaint, paras. 19-26. Each of the individual defendants is
 6 served in their official and individual capacities. Id., para. 27. Yet, in the general allegations
 7 of fact spanning pages 5 through 8, plaintiff never mentions any of these officers (except
 8 Officer Arotzarena) as having engaged in any culpable conduct.

9 Defendants move for a more definite statement, as to which claims apply to which of
 10 these officers, and the supporting allegations as to those officers to be named. Defendants
 11 are unable to effectively respond to the complaint with a more comprehensive motion to
 12 dismiss, or to answer the complaint with any efficiency, without a more definite pleading.

13 IV. CONCLUSION

14 For the foregoing reasons, the first cause of action under Section 1983, the state law
 15 causes of action against the City and "all defendants," and the purported claims under the
 16 California Constitution are defective as a matter of law. Further, to the extent that any cause
 17 of action survives the motion to dismiss, each of the individual defendants are entitled to a
 18 more definite statement as to each of the several named individual defendants in the
 19 complaint.

20 Dated: August 6, 2007

21
 22 JOHN A. RUSSO, City Attorney
 23 RANDOLPH W. HALL, Assistant City Attorney
 24 RACHEL WAGNER, Supervising Trial Attorney

25 By: S/S
 26 Attorneys for Defendants
 CITY OF OAKLAND, et al.

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PROOF OF SERVICE
Harvey v. City of Oakland
Case No. C07-01681 MJJ

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is City Hall, One City Hall Plaza, 6th Floor, Oakland, California 94612. On date shown below, I served the within documents:

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS FIRST AMENDED COMPLAINT AND MOTION FOR MORE DEFINITE STATEMENT

- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below, or as stated on the attached service list, on this date before 5:00 p.m.
- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Oakland, California addressed as set forth.
- ☐ by causing personal delivery by _____ of the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ by causing such envelope to be sent by Federal Express/Express Mail

Demetrius L. Harvey
360 So. Helm Avenue
Fresno, CA 93727
Telephone: 559-255-1971

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct in accordance with 28 U.S.C. § 1746.

Executed on August 7, 2007, at Oakland, California.

S/S
 Deborah Walther